

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3527 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NUTAN EDUCATION TRUST

Versus

STATE OF GUJARAT

Appearance:

MR PARESH M DAVE for Petitioners

MR MA BUKHARI for MR RM DESAI for Respondent No. 1, 3

MR DIPAK DAVE for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/07/2000

ORAL JUDGEMENT

1. Shri Dipak Dave, learned counsel for the respondent No.2 raised a preliminary objection that this petition suffers from the defect of misjoinder of the parties. It is urged that the respondent No.2 is neither necessary nor property party to this special civil application. The petitioner has not prayed for any

relief against the respondent No.2. In his submission, it is a clear case where the respondent No.2 has been dragged in this litigation by the petitioner for the reasons best known to it. It is prayed that this petition may be dismissed against the respondent No.2 with costs. On being put by the Court, learned counsel for the respondent No.2 admits that the Board has paid Rs.2500/= to its counsel Shri A.D. Oza in this matter for his appearance on its behalf in the Court.

2. Learned counsel for the petitioners is unable to satisfy this Court how this respondent No.2 is a necessary and proper party to this special civil application. He has failed to point out any prayer in the special civil application praying therein the relief against the respondent No.2. No action or the order of the respondent No.2 is under challenge in this special civil application.

3. In view of these facts, I am satisfied that the respondent No.2 is neither necessary nor property party to this petition and this petition suffers from the defect of misjoinder of parties. As a result of which, this special civil application is dismissed so far as it relates to the respondent No.2. Rule is discharged to this extent. The petitioner is directed to pay Rs.1500/= as costs of this petition to the respondent No.2.

4. This special civil application is filed in this Court by the petitioner on 30th April, 1990. On 13th June, 1990, notice was issued to the respondents and thereafter the same was admitted on 28th June, 1990. It is a case where the matter has been admitted after notice to the respondents. The respondents have not filed reply to the special civil application till 28th June, 1990. Thereafter this matter was listed in Court on the following dates:

11-7-1990, 12-7-1990, 19-7-1990, 26-7-1990,
7-8-1990, 6-9-1990, 13-9-1990, 27-9-1990,
6-10-1990.

5. After 6-10-1990, this matter was listed in the Court on 10th April, 2000, 29th June, 2000, 4th July, 2000, 6th July, 2000 and today. The respondents had sufficient time to their disposal if they really intended to file reply to the special civil application. That has not been done. The averments made in the special civil application stand uncontroverted by not filing reply to the special civil application. When these averments have not been controverted then to the extent the same relates

to the factual aspect of the case the same are to be taken to be admitted by the respondents. By not filing reply to the special civil application, the respondents have clearly given out that they don't want to contest this petition or they have no case to contest the petition. Be that as it may.

6. The facts of the case are that the petitioner No.1 is a public trust registered under the provisions of the Bombay Public Trusts Act, 1951. The petitioner No.2 is its Managing Trustee. The petitioner trust applied for registration of Nutan Vidhyalaya a secondary school to the Gujarat Secondary Education Board, the respondent No.2 herein. This application of the petitioner was granted. It is not in dispute that the Board vide its resolution dated 3rd March, 1987 granted registration to the petitioner-school. The petitioner has been informed of this fact that its application has been allowed and the school has been registered under the letter dated 21st April, 1987 of the Board. This document is there on the record as annexure 'D' at page No.55 in the special civil application. The registration certificate has also been granted to the petitioner on 14th July, 1987. The name of the petitioner-school was also entered in the register maintained under sec. 32 of the Act from June, 1987. As per the policy of the Government under the circular in existence at the time of filing of the application, grant of application for registration and starting a school, the petitioner was only entitled to 25% of grant for two years and after completion of two years, it was eligible for having full grant. It is not in dispute that the petitioner was given by the respondents 25% grant for two years. This factual averment has been made in para-3.18 of the petition by the petitioner and the same has not been controverted by the respondents. In spite of giving full grant to the petitioner after completion of two years, as per the new policy laid down under the resolution dated 21st October, 1987, the petitioner was not given a penny towards the grant, i.e. from the academic year 1989-90, the petitioner has not received any grant. It has been given out by the respondents that in view of this new policy of the grant to the educational institutions, the new school registered will be eligible to get grant only after completion of five years. Hence, this special civil application.

7. Learned counsel for the petitioner contended that the new policy has no effect on the petitioner-school as the registration has been granted to the petitioner-school on 3rd March, 1987. the school has

actually commenced from 15th June, 1987. Intimation of registration of school has been sent on 21st April, 1987. Necessary entry of the name of school was also made in the register maintained under section 32 of the Gujarat Secondary Education Act from June, 1987. Certificate of registration has been issued on 14th July, 1987. It has next been contended that this new policy cannot be applied to those schools which were registered prior to coming into force of the same. Lastly it is contended that it is not a case where the registration has been granted to the petitioner but as per the policy prevalent on the date of grant of registration on the date of commencing of the school, the petitioner was given 25% of grant for two years.

8. Learned counsel for the respondents, on the other hand, contended that it is not a case where the respondents have committed illegality in discontinuing the grant of the petitioner. Shri Bukhari contends that by mistake 25% grant has been given to the petitioner which will not make the petitioner eligible for full grant. This policy is applicable to the petitioner-school and only on completion of five years from the date of registration, it will get the grant.

9. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

10. It is a case which exhibits how arbitrarily the Officers of the State of Gujarat acts in the matter of grant of grant-in-aid to the educational institutions. Learned counsel for the respondents though cited a decision of this court in special civil application No.5931 of 1987 decided on 30th March, 2000 (Coram: Justice C.K. Thakkar) and contended that this matter may be sent back to the authority for consideration but that case is distinguishable on facts. It is a case where not only registration has been granted but as per the policy which stood on the date of registration, the petitioner has been actually given the benefit of the same. It is enjoyed the benefit of that policy for two years and when it acquired the eligibility for full grant, this alleged new policy was put in service and it has been denied of the same. Once the respondents have acted upon the old policy it clearly goes to show that it is admitted by them that the petitioner's case is covered therein and not under the new policy. For two years the benefit has been given to the petitioner by the respondents and now they cannot be allowed to back out from this acceptance of the right of the petitioner only on flimsy, untenable and arbitrary ground. The petitioner has unnecessarily

been dragged into litigation by the respondents because of their wholly irresponsible approach in the matter.

11. As a result of the aforesaid discussion, this petition succeeds and the same is allowed and it is hereby declared that the petitioner's case is governed by the Government policy which stood prior to the resolution dated 20th June, 1987. It is further declared that the resolution dated 20th June, 1987 is not applicable to the case of the petitioner. As a result of this declaration, the petitioner shall be entitled for all the consequential benefits. The respondents are directed to determine the amount of grant payable to the petitioner-school for all these years in accordance with the old policy within a period of two months from the date of receipt of writ of this order and pay arrears thereof within one month next together with interest thereon at the rate of 12% p.a. from the date of filing of the special civil application till the date of payment thereof. It is a case where the Trust has been unnecessarily dragged into litigation by respondent- a welfare State in a case which otherwise does not call for and I find it to be a fit case where costs have to be awarded to the petitioner. The State of Gujarat is directed to pay Rs.5000/= as costs of this petition to the petitioner. This is the amount which has been paid by the petitioner as fees to its counsel for rendering to it its professional services in the matter. Rule is made absolute accordingly.

zgs/-